

1 HONORABLE JOHN C. COUGHENOUR
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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE WESTERN DISTRICT OF WASHINGTON
11 AT SEATTLE

12 WILD FISH CONSERVANCY,

13 Plaintiff,

14 v.

15 COOKE AQUACULTURE PACIFIC, LLC,

16 Defendant.

17 Case No. 2:17-cv-01708-JCC

18 [PROPOSED] ORDER GRANTING
19 PLAINTIFF'S FIRST MOTION FOR
20 PARTIAL SUMMARY JUDGMENT

21 BEFORE THE COURT is Plaintiff's First Motion for Partial Summary Judgment
22 ("Motion").

23 Plaintiff Wild Fish Conservancy ("Conservancy") moves for summary judgment under
24 Rule 56 and requests that the Court find that Defendant Cooke Aquaculture Pacific, LLC
25 ("Cooke") has violated certain terms of the eight National Pollutant Discharge Elimination
26 System ("NPDES") permits issued under section 402 of the Clean Water Act ("CWA"), 33
27 U.S.C. § 1342, for Cooke's eight commercial salmon farms in Puget Sound.

28 Specifically, the Conservancy requests that the Court grant summary judgment declaring
29 that Cooke's Pollution Prevention Plans implemented from September 14, 2012, which is the

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beginning of the statute of limitations period, to the present violate Condition S6 of the NPDES permits. Cooke has implemented four Pollution Prevention Plans during this period: a plan dated April 2012 was in effect until January 2015 (“2012 Pollution Prevention Plan”); a plan dated January 2015 was effective until April 2017 (“2015 Pollution Prevention Plan”); a plan dated April 2017 was in effect only a few months until October 2017 (“April 2017 Pollution Prevention Plan”); and a plan dated October 2017 remains in effect (“October 2017 Pollution Prevention Plan”). The Conservancy requests that the Court determine that these plans violate Condition S6 of the NPDES permits by failing to adequately address inspections of the net pen cages, the storage of chemicals, and the handling of blood from fish harvest activities.

The Conservancy further requests that the Court grant summary judgment declaring that Cooke’s Fish Release Prevention and Monitoring Plans (“Release Prevention Plans”) implemented from September 14, 2012 to October 2018 violate Condition S7 of the NPDES permits. Cooke implemented three Release Prevention Plans during that period: a plan dated August 2012 was in effect until June 2014 (“2012 Release Prevention Plan”); a plan dated June 2014 was in effect until January 2017 (“2014 Release Prevention Plan”); and a plan dated January 2017 was effective until October 2018 (“2017 Release Prevention Plan”). The Conservancy requests that the Court determine that these plans violate Condition S7 of the NPDES permits by failing to adequately address procedures to track the number of fish lost from the net pens to predation and escapements and the inspection of underwater mooring components for the net pens.

The Court finds that there are no material facts in dispute with respect to the relief requested by the Motion and that partial summary judgment should be GRANTED.

Accordingly,

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1 **IT IS ORDERED** that:

2 1. Cooke has violated Condition S6 of the eight NPDES permits from September 14,
3 2012 to the present as follows:

4 a. Cooke's 2012 Pollution Prevention Plan, 2015 Pollution Prevention Plan,
5 April 2017 Pollution Prevention Plan, and October 2017 Pollution Prevention Plan violate
6 Condition S6.F of the NPDES permits by failing to adequately address annual inspections of the
7 main cage structures of the net pens;

8 b. Cooke's 2012 Pollution Prevention Plan, 2015 Pollution Prevention Plan,
9 April 2017 Pollution Prevention Plan, and October 2017 Pollution Prevention Plan violate
10 Condition S6.D of the NPDES permits by failing to adequately address the storage and disposal
11 of disease control chemicals used at the net pens; and

12 c. Cooke's 2012 Pollution Prevention Plan, 2015 Pollution Prevention Plan,
13 April 2017 Pollution Prevention Plan, and October 2017 Pollution Prevention Plan violate
14 Condition S6.E of the NPDES permits by failing to adequately address the collection, storage,
15 and disposal of blood from harvest operations at the net pens; and

16 2. Cooke has violated Condition S7 of the eight NPDES permits from September 14,
17 2012 to October 2018 as follows:

18 a. Cooke's 2012 Release Prevention Plan, 2014 Release Prevention Plan, and
19 2017 Release Prevention Plan violate Condition S7.6 of the NPDES permits by failing to
20 adequately address procedures for the routine tracking of the number in fish in the net pens that
21 are lost to predation and to escapements; and

22 b. Cooke's 2012 Release Prevention Plan, 2014 Release Prevention Plan, and
23 2017 Release Prevention Plan violate Conditions S7.1 and S7.2 of the NPDES permits by calling
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1 for underwater inspections of mooring components at the net pens at less frequent intervals than
2 required by the NPDES permits.

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4 Dated this _____ day of _____, 2019.

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8 Honorable John C. Coughenour
United States District Judge

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12 Presented by:

13 KAMPMEIER & KNUTSEN, PLLC

14 By: s/ Brian A. Knutson
Brian A. Knutson, WSBA No. 38806

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16 EARTHRISE LAW CENTER

17 By: s/ Lia Comerford
Lia Comerford (OSB No. 141513), *admitted pro hac vice*

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19 Attorneys for Plaintiff

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